Supreme Court, U.S.
FILED

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# IN THE SUPREME COURT OF THE UNITED STATES

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*LINDA A HAMPTON*
*vs.*

*WINSTON COUNTY, MISSISSIPPI*

*LINDA A. HAMPTON, PETITIONER.*

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On Petition For Writ Of Certiorari
To The Mississippi Supreme Court

## PETITION FOR WRIT OF CERTIORARI

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## THE QUESTIONS PRESENTED FOR REVIEW

The questions presented to this Court for review are whether Petitioner's constitutional rights to due process and fair trial were violated when:

(1) Petitioner was denied the opportunity to have corrected material alterations in the transcript record of her criminal proceeding.

(2) Petitioner was subpoenaed to attend a motion hearing but never notified of a criminal charge for which she was prosecuted and convicted in said motion hearing.

## A LIST OF INTERESTED PARTIES

1. Judge Vernon R. Cotten
   Special Circuit Court Judge
   205 Main Street
   Carthage, MS 39051

2. Remigio Segura, Court Reporter
   421 Bay Pointe Cr.
   Brandon, MS 39047

3. Linda A. Hampton, Petitioner
   P.O. Box 99
   DeKalb, MS 39328

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## BASIS FOR JURISDICTION

1. Mississippi Supreme Court Order entered January 5, 2006 affirming the trial court conviction.

## CONSTITUTIONAL PROVISIONS INVOLVED

1. The Sixth Amendment of the Constitution of the United States guaranteeing all persons accused of crimes the right to be informed of the nature of the charges against them and to have an impartial tribunal decide their guilt or innocence.

2. The Fourteenth Amendment of the Constitution of the United States securing all persons against any state action which results in either deprivation of life, liberty or property without due process of law and providing all persons equal protection of the law.

## STATE STATUTES INVOLVED

Mississippi Code Annotated Sections 9-13-3, 9-13-25 and 9-13-31 provide for court reporters in all criminal cases to ensure a true and correct record for review in appellate proceedings.

## STATEMENT OF CASE

Sheriff Walter Coburn was the first African American to be elected Sheriff of Winston County, Mississippi in the November 4, 2003 general election. On January 2, 2004 summons was served upon Sheriff Coburn demanding that he appear and defend against an election contest on April 26, 2004. Petitioner was retained by Sheriff Coburn to represent him in this matter.

On April 26, 2004 Petitioner appeared at the Winston County Courthouse as demanded in the summons. The courthouse was locked. Petitioner waited with her client in the courthouse for most of the day in anticipation of the trial. Neither the judge nor the plaintiff appeared. The courthouse was closed in observance of Confederate Memorial Day. No trial was conducted. No order of continuance was entered.

Subsequently, the trial court judge set a motion hearing for August 27, 2004. The trial court's Order setting the motion hearing for August 27, 2004 did not order Petitioner to appear and Petitioner did not appear. The trial court judge then set a second motion hearing for September 3, 2004. Petitioner was subpoenaed and ordered to be and appear at that hearing. Petitioner appeared as ordered under protest.

At that hearing upon opening of the court the trial court judge prosecuted Hampton, adjudged her guilty of criminal contempt, and sentenced her to incarceration. The trial court judge stated that Hampton was incarcerated, but free to move about. Hampton was then ordered to proceed or be held in further contempt. Under protest Hampton proceeded to present defendant's motions.

At no time prior to the hearing was Petitioner informed that she was charged with criminal contempt.

During the criminal contempt proceeding the court took judicial notice of the entire election contest case record. Therefore Petitioner designated the entire record on appeal. Prior to filing the transcript, however, court reporter, Remigio Segura notified Petitioner that the trial judge had told him to only transcribe portions of the trial proceedings. Petitioner refused to agree to accept less than the entire record. Subsequently, the court reporter claimed to have a computer crash causing him to have to reconstruct the entire transcript.

Once the transcript was finally filed with the circuit court clerk, Petitioner reviewed the transcript and found material alterations throughout the transcript. The most prevalent alteration falsely indicated that Petitioner

stated that she knew she was charged with criminal contempt, was aware that she was attending a criminal proceeding and was ready to proceed.

M.R.A.P. 10(b)(5) requires certification of the record to be served upon the trial court clerk, judge and court reporter providing notification of inaccuracies contained in the record. Timely notification was served on the trial court and state supreme court • that numerous material inaccuracies were found throughout Segura's transcript on 1/10/05. Due to the criminal nature of these acts, Petitioner filed criminal charges against the individuals responsible for altering and falsifying the testimony presented at the hearing. No one responded to the notification of material inaccuracies.

Petitioner filed a detailed statement of the numerous material alterations contained throughout Segura's transcript on 4/8/05. The state supreme court ordered that this notification of numerous material alterations and false statements was deemed a motion to correct the record and was dismissed as untimely. Petitioner's timely filed notification of 1/10/05 was ignored.

The state supreme court then went on to affirm the trial court's conviction based upon the trial court's fabricated record.

## ARGUMENT

Mississippi Code Annotated Sections 9-13-3, 9-13-25 and 9-13-31 provide for court reporters in all criminal cases to ensure a true and correct record for review in appellate proceedings. The court reporter in this case breached his oath of office when he deliberately altered most of the statements made in Petitioner's criminal proceeding.

Petitioner was subpoenaed for "the court to entertain a motion for sanctions" not a criminal prosecution. In court, Petitioner read from a prepared statement that was filed with the trial court on the day of the proceeding and subsequently with the state supreme court. The statement as it appears in the transcript is not even similar to the statement read by Petitioner. Petitioner never said she was ready for any criminal proceeding. The transcript indicated that she did. The judge stated in open court that he had contempt for Petitioner. The transcript was falsified to say otherwise. Affidavits were filed by numerous individuals present at the trial verifying the true statements made in court. These affidavits were submitted in support of Petitioner's motion to correct the record as well as in Petitioner's appellate brief. These affidavits were ignored by the state supreme court.

Petitioner was even incarcerated in open court on 9/3/04 and subsequently released on 9/8/04 based upon an order issued by the trial

judge. This order issued from the bench was altered in the transcript so as to appear that Petitioner was only incarcerated for the length of the court proceedings. Evidence reflecting what truly happened regarding Petitioner's incarceration is the official release executed by the county sheriff attesting to the fact that Petitioner was incarcerated in open court and released after serving the court ordered sentence. This release was also filed with the state supreme court. The release was not addressed in the appellate order affirming the criminal conviction.

Ordinarily, it is presumed that public officials have properly discharged their official duties. However, this presumption is rebuttable. See *Bracy v. Gramley, 520 U.S. 899, 117 S.Ct. 1793 (1997)* citing *United States v. Chemical Foundation, Inc., 272 U.S. 1 (1926).* In the case *sub judice*, Petitioner soundly rebutted the presumption that the court official, the court reporter, properly discharged his duty of accurately recording the court proceeding. Petitioner provided a filed statement from which she read that was not reflected in the transcript. Petitioner provided sworn affidavits of individuals present in court that attest to the fact that statements made in court were not those provided in the transcript of the court reporter.

Once notified of the material alterations to the transcript record, the trial court judge did not take action to correct the record pursuant to M.R.A.P. 10(b)(5). Once notified of the alterations to the record, the state supreme court did not take action to correct the record pursuant to M.R.A.P. 10(e). The appellate court on proper motion or of its own initiative was empowered to order that the false misstatements be corrected.

A fair trial in a fair tribunal is a basic requirement of due process. The United States system of law has always endeavored to prevent even the probability of unfairness. To perform its high function in the best way "justice must satisfy the appearance of justice." See *In Re Murchison et al, 349 U.S. 133, 75 S.Ct. 623 (1955)* citing *Offutt v. United States, 348 U.S. 11* and *Tumey v. Ohio, 273 U.S. 510.*

The Sixth Amendment of the Constitution of the United States guarantees that all persons have an impartial tribunal decide their guilt or innocence. The court officials in this case deprived Petitioner of this constitutional right. Likewise, the Sixth Amendment of the Constitution of the United States guarantees all persons accused of crimes the right to be informed of the nature of the charges against them. The court officials in this case deprived Petitioner of this constitutional right, also.